

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

UNITED INTERNATIONAL INVESTIGATIVE
SERVICES, INC.,

and

Case 21-CA-35019X

NATIONAL UNION OF SECURITY
OFFICERS AND GUARDS

Alan L. Wu, Esq., of Los Angeles, California,
on behalf of General Counsel.

Gerard Jones, Secretary-Treasurer,
National Union of Security Officers and Guards,
Jamaica, New York, on behalf of Charging Party.

Kathleen Guidice and Telly Kanakis,
of Orange, California, on behalf of Respondent.

DECISION

Statement of the Case

John J. McCarrick, Administrative Law Judge. This case was tried in Los Angeles, California, on May 5, 2003, upon General Counsel's complaint that alleged United International Investigative Services, Inc., (Respondent) violated Section 8(a)(1) and (5) of the Act by changing terms and conditions of employment by failing to pay wages, vacation pay and overtime pay and by laying off employees without notice to National Union of Security Officers and Guards (Union) and without affording the Union an opportunity to bargain with respect to the effects of this decision. Respondent timely denied any wrongdoing. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel, I make the following:

Findings of Fact

I. Jurisdiction

Respondent, a California corporation with an office and place of business in Anaheim, California, has been engaged at all times material in providing security guard services. During the calendar year ending December 31, 2001, Respondent provided services valued in excess of \$50,000 to the State of California, an enterprise engaged in interstate commerce. Respondent admits and I find that it is an employer engaged in commerce within the meaning of

Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

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B. The Facts

10 The facts in this case are not in dispute. Respondent and the State of California were parties to a contract providing security guard services to over 200 agencies of the State of California. Respondent and the Union were parties to a collective-bargaining agreement effective October 1, 2001 through September 30, 2006, that recognized the Union as the exclusive representative of the following unit:¹

15 All full time and part-time security guards employed by Respondent and working under contract at various State facilities pursuant to a contract with the California Highway Patrol (CHP), excluding office employees, clerical employees, professional employees, dispatchers, and field supervisors.

20 In June 2001, Respondent entered the option year of its agreement with the State of California. While the CHP administered the umbrella contract for guard services, Respondent signed separate contracts with each of 243 State agencies for which it provided security guard services. Upon the expiration of the two-year contract with the State of California, new agreements had to be executed for the option year with each of the 243 State agencies. There were numerous delays in executing new agreements with the State agencies and many invoices
25 for services submitted by Respondent were delinquent between June 30, 2001 and March 6, 2002. The State Comptroller took the position that without signed contracts, the invoices could not be paid even though the State was accepting Respondent's services after June 30, 2001. As of March 6, 2002 there was \$2,611,657.26 in invoices unpaid by the State. Ultimately, on or about March 6, 2002, in a bureaucratic Catch-22, the CHP terminated
30 Respondent as its contractor for guard services because Respondent was unable to meet its payroll. Of Respondent's 700 employees performing guard services for the State of California, 80 percent of the employees were not paid their full wages and benefits.

35 On March 6, 2002, Respondent's Chief Executive Officer, Kathleen Guidice (Guidice), had a telephone conversation with Chuck Gunter (Gunter) of the CHP. Gunter told Guidice that she had to tell him by 4:00 p.m. that day if Respondent was going to make payroll. Sometime after 4:00 p.m. on March 6, 2002, Guidice phoned Gunter and told him Respondent was not going to meet its payroll. Gunter then said that the CHP was terminating Respondent's contract for guard services with the State of California. After speaking with Gunter, Respondent
40 prepared a letter to employees, advising them that they would not be paid.²

Around noon on March 6, 2002 Union Secretary-Treasurer, Gerard Jones (Jones), began receiving calls from Respondent's employees complaining that they had not been paid. Jones called Respondent's payroll clerk Joe Parker (Parker). Parker advised Jones that payroll
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¹ Section 1 of the parties' collective-bargaining agreement provided that the contractual relationship was conditioned upon Respondent maintaining its status as contractor with the California Highway Patrol. No grievance was filed in this matter since the collective-bargaining agreement terminated when Respondent's contract with the State of California was terminated.
50 (Stipulated Exhibit 1.)

² General Counsel's Exhibit 2.

checks would be going out later that day. Later in the day Jones had a conversation with Guidice who told Jones that checks would not be sent out because the State of California had not paid Respondent. Guidice faxed Jones a copy of the letter she sent to Gunter advising that Respondent could not meet its payroll for March 6, 2002,³ and the letter Respondent gave its employees indicating they would not be paid.⁴

The parties agreed in the Stipulation of Facts,⁵ and I find that:

19. Since about March 6, 2002, UIIS (Respondent) has not paid the accrued wages, accrued vacation pay, and accrued overtime pay to Unit employees for the pay periods of February 10, 2002 to February 23, 2002 and February 24, 2002 to March 6, 2002.

21. On March 6, 2002, UIIS ceased providing security guard services to all of its various jobsites at various state government agencies in the State of California.

22. On March 6, 2002, UIIS laid off between 700 and 800 Unit employees as a result of UIIS's decision to cease providing security guard services as described in paragraph 21.

23. UIIS did not notify the Union of its decision to lay off Unit employees, as described in paragraphs 21 and 22, until after UIIS decided to lay off the Unit employees.

24. UIIS did not provide an opportunity to the Union to bargain about the effects of UIIS's decision to lay off Unit employees, as described in paragraphs 21 and 22, before UIIS implemented its decision to lay off Unite employees.

25. UIIS did not notify the Union about its decision to not pay the accrued wages, accrued vacation pay, and accrued overtime pay of Unit employees for the pay periods of February 10, 2002 to February 23, 2002, and February 24, 2002 to March 6, 2002, until after UIIS implemented its decision to not make those payments.

26. UIIS did not provide an opportunity to the Union to bargain about UIIS's decision, as discussed in paragraph 25, before UIIS implemented that decision.

C. The Analysis

1. The Law

Section 8(d) of the Act requires an employer to meet and confer in good faith with the employees' majority representative concerning wages, hours and other terms and conditions of employment. Subjects of bargaining mentioned in Section 8(d) are mandatory subjects of bargaining. *NLRB v. Borg-Warner Corp.* 356 U.S. 342, 349 (1958). Unilateral changes by an employer during the course of a collective-bargaining relationship concerning mandatory subjects of bargaining are per se violations of Section 8(a)(5) of the Act without regard to good

³ Stipulated Exhibit 3.

⁴ General Counsel's Exhibit 2.

⁵ Joint Exhibit 1.

faith. *NLRB v. Katz*, 369 U.S. 736, 743 (1962). It is well established that wages, overtime and vacation pay are mandatory subjects of bargaining. *Verizon New York, Inc.*, 339 NLRB No. 6, slip op. at 2 (2003); *Keeler Brass Co.*, 327 NLRB 585, 589 (1999). An employer also has the duty to provide the union with notice of layoffs before they occur to satisfy the employer's duty to bargain over the effects of such layoffs. *Kajima Engineering and Construction, Inc.*, 337 NLRB 1604 (2000); *Geiger Ready-Mix Co. of Kansas City*, 315 NLRB 1021 (1994).

2. The Discussion

While it is unfortunate that Respondent was unable to meet its payroll because the State of California failed to pay for Respondent's services rendered, this absence of bad faith by Respondent does not absolve it of its obligation to bargain with the Union concerning mandatory subjects. The parties stipulated that Respondent did not afford the Union an opportunity to bargain over Respondent's decision not to pay its employees accrued wages, overtime or vacation pay. It was further stipulated that Respondent failed to give the Union either notice of or a chance to bargain over the effects of its decision to layoff unit employees before implementing that decision. By unilaterally failing to pay accrued wages, overtime and vacation pay, and by laying off employees without notice to the Union or bargaining over the effects of this decision, Respondent violated Sections 8(a)(1) and (5) of the Act.

Conclusions of Law

By unilaterally failing to pay accrued wages, overtime and vacation pay and by laying off employees without notice to the Union or bargaining over the effects of this decision, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent must pay unit employees their accrued wages, overtime pay and vacation pay for the pay periods February 10, 2002 to March 6, 2002. I shall recommend that Respondent be ordered to make whole each employee for loss of wages, overtime and vacation pay. Back pay shall be calculated as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent must, on request, bargain with the Union concerning the effects of Respondent's decision to lay off unit employees on March 6, 2002.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, United International Investigative Services, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- a. Refusing to pay Unit employees accrued wages, overtime and vacation pay for the pay periods from February 10, 2002 to March 6, 2002.
- b. Failing to give the Union notice and an opportunity to bargain about the effects of Respondent's March 6, 2002 decision to lay off Unit employees.
- c. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- a. On request, bargain with the Union as the exclusive bargaining representative of the employees in the following appropriate unit concerning the effects of its decision to lay off Unit employees on March 6, 2002:

All full time and part-time security guards employed by Respondent and working under contract at various State facilities pursuant to a contract with the California Highway Patrol (CHP), excluding office employees, clerical employees, professional employees, dispatchers, and field supervisors.

- b. Make whole, with interest, those Unit employees who were laid off on March 6, 2002, for any loss of pay or other employment benefits suffered as a result of the unilateral action.
- c. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- d. Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"⁷ to all employees in the above described unit who were employed by Respondent at all of its jobsites at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at those jobsites. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

⁷ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

- e. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, San Francisco, California, August 1, 2003.

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John J. McCarrick
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT unilaterally fail to pay unit employees' accrued wages, overtime and vacation pay.

WE WILL NOT fail to provide the Union notice and an opportunity to bargain about the effects of our decision to lay off unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full time and part-time security guards employed by Respondent and working under contract at various State facilities pursuant to a contract with the California Highway Patrol (CHP), excluding office employees, clerical employees, professional employees, dispatchers, and field supervisors.

WE WILL make employees whole for any loss of wages, overtime or vacation pay as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

United International Investigative Services, Inc.

(Employer)

Dated _____ By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449

(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE COMPLIANCE OFFICER, (213) 894-5229.